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Attorneys for Defendant Google LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
JOINT SUBMISSION RE: DEPOSITION
OF GOOGLE OFFICER LORRAINE
TWOHILL**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Submission Re: Deposition of Google Officer Lorraine Twohill (“Joint Submission”), which contain non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Joint Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
December 16, 2021 Joint Submission	Portions highlighted in yellow at: 2:23, 2:25, 2:27-28, 3:7, 3:10-11, 5:14-16	Google

II. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information”).

III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE” STANDARD AND SHOULD ALL BE SEALED

1 Courts have repeatedly found it appropriate to seal documents that contain “business
2 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
3 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
4 about the operation of [the party’s] products and that public disclosure could harm [the party] by
5 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
6 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
7 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
8 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
9 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
10 used to the company’s competitive disadvantage”) (citation omitted).

11 Here, the Joint Submission comprises confidential information regarding highly sensitive
12 features of Google’s internal systems and operations that Google does not share publicly. Specifically,
13 this information provides details related to various types of Google’s internal projects and their
14 proprietary functions. Such information reveals Google’s internal strategies, system designs, and
15 business practices for operating and maintaining many of its important services while complying with
16 legal and privacy obligations.

17 Public disclosure of the above-listed information would harm Google’s competitive standing it
18 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
19 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
20 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
21 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
22 sensitive business information related to Google’s processes and policies to ensure the integrity and
23 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
24 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
25 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
26 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
27 motion to seal as to “internal research results that disclose statistical coding that is not publically
28 available”).

1 Moreover, if publicly disclosed, malicious actors may use such information to seek to
2 compromise Google’s internal systems and data structures. Google would be placed at an increased
3 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*
4 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
5 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
6 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
7 threat is an additional reason for this Court to seal the identified information.

8 The information Google seeks to redact, including internal projects and their proprietary
9 functions, is the minimal amount of information needed to protect its internal systems and operations
10 from being exposed to not only its competitors but also to nefarious actors who may improperly seek
11 access to and disrupt these systems and operations. The “good cause” rather than the “compelling
12 reasons” standard should apply but under either standard, Google’s sealing request is warranted.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Google respectfully requests that the Court seal the identified
15 portions of the Joint Submission .

1 DATED: December 16, 2021

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